Consultation with FMC on Developing US Positions:
UN Convention of the Law of the Sea and & Emerging UN Convention on Biodiversity in areas Beyond National Jurisdiction (BBNJ)

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2. Topic Overview:

In 2015, the UN General Assembly agreed to develop an international legally binding instrument under the UN Convention on the Law of the Sea (UNCLOS). Negotiations are underway to develop a new legally binding convention for the “conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction” (BBNJ). There are four main themes of the new convention: 1) marine genetic resources, 2) “area-based management tools” including marine protected areas (MPAs), 3) environmental impact assessments, and 4) capacity-building and the transfer of marine technology. Recommendations, proposals, and criteria for selecting marine protected areas in the open ocean are synonymous with overtures from environmental non-governmental organizations (ENGOs, i.e. Pew, Greenpeace) encouraging the utilization of high seas closures through international efforts. Proposed criteria for selecting MPAs on the high seas disproportionately impact waters adjacent to US exclusive economic zones (EEZs).

Developments in BBNJ may allow ENGOs an instrument to influence or develop international fisheries policies on the high seas that would otherwise not be tenable under regional fisheries management organizations (RFMOs) purview. Negotiations on BBNJ have included discussion on how existing legal instruments should not be undermined. However, the legal instrument for which BBNJ is under may supersede RFMO management authority. The US Department of State is leading negotiations at the UN on behalf of US interests, including international fisheries. The UN Committee on Fisheries has affirmed that it is the foremost forum for which debate and discussion on proposed actions regarding BBNJ should take place.

The CCC should have significant concerns with the development of the convention such that high seas closures could be imposed, override existing RFMO authority, and unfairly impact US fisheries under FMC management.

3. Action Items and Follow-Up:

The CCC should make recommendations regarding BBNJ and develop proactive positions pertaining to similar conventions, should they be introduced in the future.

The CCC should recommend US State Department to consult with FMCs on a regular basis during the negotiation of the new BBNJ convention.